



# **Corporations Legislation Amendment (Derivative Transactions) Act 2012**

**No. 178, 2012**

**An Act to amend the law relating to transactions in  
derivatives, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to transactions in  
derivatives, and for other purposes**

*[Assented to 6 December 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Corporations Legislation Amendment  
(Derivative Transactions) Act 2012*.

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 December 2012
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	3 January 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Amendment of the Corporations Act 2001**

#### *Corporations Act 2001*

##### **1 Section 9**

Insert:

*Australian derivative trade repository licence*, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

##### **2 Section 9**

Insert:

*derivative trade repository rules*, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

##### **3 Section 9**

Insert:

*derivative transaction rules*, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

##### **4 Section 760B (after table item 5)**

Insert:

5A    7.5A    regulation of derivative transactions and derivative trade repositories

##### **5 Section 761A**

Insert:

*Australian derivative trade repository licence*: see section 905B.

##### **6 Section 761A**

Insert:

*clearing requirements* (in relation to derivative transactions): see subsection 901A(7).

## 7 Section 761A

Insert:

*derivative trade data* means:

- (a) information about derivative transactions, or about positions relating to derivative transactions; or
- (b) information (including statistical data) that is created or derived from information referred to in paragraph (a).

## 8 Section 761A

Insert:

*derivative trade repository* means a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported (whether or not other information or data can also be reported to the facility).

## 9 Section 761A

Insert:

*derivative trade repository licensee* means a person who holds an Australian derivative trade repository licence.

## 10 Section 761A

Insert:

*derivative trade repository rules*: see subsection 903A(1).

## 11 Section 761A

Insert:

*derivative transaction* means:

- (a) the entry into of an arrangement that is a derivative; or
- (b) the modification or termination of such an arrangement; or
- (c) the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or



- (d) any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations for the purpose of this paragraph.

**12 Section 761A**

Insert:

*derivative transaction rules*: see subsection 901A(1).

**13 Section 761A**

Insert:

*execution requirements* (in relation to derivative transactions): see subsection 901A(5).

**14 Section 761A (definition of *involved in*)**

Omit “or CS facility licensee”, substitute “, CS facility licensee or derivative trade repository licensee”.

**15 Section 761A**

Insert:

*licensed derivative trade repository* means a derivative trade repository the operation of which is authorised by an Australian derivative trade repository licence.

**16 Section 761A**

Insert:

*prescribed derivative trade repository* means a facility that is (or that is in a class that is) prescribed by the regulations for the purpose of paragraph 901A(6)(b).

**17 Section 761A**

Insert:

*reporting requirements* (in relation to derivative transactions): see subsection 901A(6).

**18 At the end of paragraph 765A(1)(l)**

Add:

or (iv) a derivative trade repository;

## 19 Subsection 793B(2)

Repeal the subsection, substitute:

- (2) However, if there is an inconsistency between the operating rules of a financial market, and any of the following other rules:
- (a) the market integrity rules;
  - (b) the derivative transaction rules;
  - (c) the derivative trade repository rules;

those other rules prevail over the operating rules to the extent of the inconsistency.

Note 1: If there is an inconsistency between the market integrity rules and the derivative transaction rules or the derivative trade repository rules, the market integrity rules prevail: see subsection 798H(3).

Note 2: If there is an inconsistency between the derivative transaction rules and the derivative trade repository rules, the derivative transaction rules prevail: see subsection 901E(2).

## 20 At the end of section 798H

Add:

- (3) If there is an inconsistency between the market integrity rules and the derivative transaction rules or the derivative trade repository rules, the market integrity rules prevail to the extent of the inconsistency.

## 21 Section 822B

Before “The operating rules”, insert “(1)”.

## 22 At the end of section 822B, add:

- (2) However, if there is an inconsistency between the operating rules of a licensed CS facility and any of the following other rules:
- (a) the derivative transaction rules;
  - (b) the derivative trade repository rules;

those other rules prevail over the operating rules to the extent of the inconsistency.

Note: If there is an inconsistency between the derivative transaction rules and the derivative trade repository rules, the derivative transaction rules prevail: see subsection 901E(2).

**23 After subsection 827D(2)**

Insert:

- (2A) If there is an inconsistency between the standards and the derivative transaction rules or the derivative trade repository rules, the standards prevail to the extent of the inconsistency.

**24 Section 853B**

Omit “or a CS facility licensee”, substitute “, a CS facility licensee or a derivative trade repository licensee”.

**25 Subsection 853C(1)**

Omit “licensed financial market operator or licensed CS facility operator”, substitute “market licensee, a CS facility licensee or a derivative trade repository licensee”.

**26 Subsection 853C(1)**

Omit “either”, substitute “any”.

**27 Paragraphs 853D(2)(a) and (b)**

Omit “or an Australian CS facility licence”, substitute “, an Australian CS facility licence or an Australian derivative trade repository licence”.

**28 Subsection 853F(1)**

Omit “or a CS licensee”, substitute “, a CS facility licensee or a derivative trade repository licensee”.

**29 Subsection 853F(2)**

Omit “or CS licensee”, substitute “, a CS facility licensee or a derivative trade repository licensee”.

**30 Section 853G**

Omit “or a CS facility licensee”, substitute “, a CS facility licensee or a derivative trade repository licensee”.

**31 Paragraph 854A(1)(b)**

Omit “or a CS facility licensee”, substitute “, a CS facility licensee or a derivative trade repository licensee”.

**32 After Part 7.5**

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Insert:

## **Part 7.5A—Regulation of derivative transactions and derivative trade repositories**

### **Division 1—Application of Part**

#### **900A Derivatives and transactions etc. to which this Part applies**

- (1) Unless an express contrary intention appears, this Part applies, on the basis specified in section 3, to derivatives, derivative transactions, facilities, persons, bodies and other matters located in or otherwise connected with:
  - (a) a referring State; or
  - (b) the Northern Territory or the Capital Territory; or
  - (c) a place outside Australia.
- (2) This section does not, by implication, affect the interpretation of provisions of this Act outside this Part (except to the extent appropriate for any provisions outside this Part apply or relate to matters covered by this Part).

### **Division 2—Regulation of derivative transactions: derivative transaction rules**

#### **Subdivision A—Power to make derivative transaction rules**

##### **901A ASIC may make derivative transaction rules**

*Power to make derivative transaction rules*

- (1) Subject to this Division, ASIC may, by legislative instrument, make rules (*derivative transaction rules*) dealing with matters as permitted by this section.

Note: Subdivision C deals with the process of making derivative transaction rules.

*Main matters that may be dealt with in derivative transaction rules*

- (2) The derivative transaction rules may (subject to this Division) impose any of the following kinds of requirements:
- (a) execution requirements (see subsection (5));
  - (b) reporting requirements (see subsection (6));
  - (c) clearing requirements (see subsection (7));
  - (d) requirements that are incidental or related to execution requirements, reporting requirements or clearing requirements.

Note: Paragraph (2)(d): the derivative transaction rules may (for example) impose requirements on the operator of a licensed derivative trade repository to facilitate compliance, by other persons, with reporting requirements.

*Other matters that may be dealt with in derivative transaction rules*

- (3) The derivative transaction rules may also (subject to this Division) deal with matters incidental or related to requirements referred to in subsection (2), including any of the following:
- (a) specifying the classes of derivative transactions in relation to which particular requirements apply;
  - (b) for execution requirements—specifying the licensed market or prescribed facility (or the class of licensed market or prescribed facility) on which derivative transactions in a particular class must be entered into;
  - (c) for reporting requirements:
    - (i) specifying the licensed derivative trade repository or prescribed derivative trade repository (or the class of licensed derivative trade repository or prescribed derivative trade repository), to which information about derivative transactions, or positions, in a particular class must be reported; and
    - (ii) specifying the information that is required to be reported;
  - (d) for clearing requirements:
    - (i) specifying the licensed CS facility or prescribed facility (or the class of licensed CS facility or prescribed facility) through which derivative transactions in a particular class must be cleared; and

- (ii) specifying a period within which transactions must be cleared;
- (e) specifying the persons who are required to comply with requirements imposed by the rules;
- (f) the manner and form in which persons must comply with requirements imposed by the rules;
- (g) the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them;
- (h) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules;
- (i) any other matters that the provisions of this Act provide may be dealt with in the derivative transaction rules.

Note: Paragraph (e): subject to section 901D, the persons who are required to comply with requirements imposed by the rules may (for example) be:

- (a) persons who are parties to derivative transactions, or who are intermediaries or agents who facilitate or are otherwise involved in derivative transactions; or
- (b) operators of financial markets on which derivative transactions are entered into; or
- (c) operators of clearing and settlement facilities through which derivative transactions are cleared; or
- (d) operators of licensed or prescribed derivative trade repositories.

#### *Penalty amounts*

- (4) The derivative transaction rules may specify a penalty amount for a rule. A penalty amount must not exceed 1,000 penalty units.

#### *Meaning of execution requirements*

- (5) For the purpose of this Chapter, **execution requirements** are requirements for derivative transactions not to be entered into otherwise than on:
  - (a) a licensed market, the licence for which authorises a class of financial products that includes the derivatives to which the transactions relate to be dealt with on the market; or
  - (b) a facility that is (or that is in a class of facilities that is) prescribed by the regulations for the purpose of this paragraph in relation to a class of derivatives that includes the derivatives to which the transactions relate.

*Meaning of reporting requirements*

- (6) For the purpose of this Chapter, **reporting requirements** are requirements for information about derivative transactions, or about positions relating to derivative transactions, to be reported to:
- (a) a licensed derivative trade repository, the licence for which authorises the repository to provide services in respect of a class of derivatives that includes the derivatives to which the transactions relate; or
  - (b) a facility that is (or that is in a class of facilities that is) prescribed by the regulations for the purpose of this paragraph in relation to a class of derivatives that includes the derivatives to which the transactions relate.

*Meaning of clearing requirements*

- (7) For the purpose of this Chapter, **clearing requirements** are requirements for derivative transactions to be cleared through:
- (a) a licensed CS facility, the licence for which authorises the facility to provide services in respect of a class of financial products that includes the derivatives to which the transactions relate; or
  - (b) a facility that is (or that is in a class of facilities that is) prescribed by the regulations for the purpose of this paragraph in relation to a class of derivatives that includes the derivatives to which the transactions relate.

*Rules cannot generally impose requirements retrospectively*

- (8) The derivative transaction rules:
- (a) cannot impose an execution requirement on a person in relation to a derivative transaction entered into before the requirement started to apply to the person; and
  - (b) cannot impose a reporting requirement on a person in relation to a derivative transaction entered into before the requirement started to apply to the person, or in relation to a position as it was at a time before the requirement started to apply to the person; and
  - (c) cannot impose a clearing requirement on a person in relation to a derivative transaction entered into before the requirement started to apply to the person, unless the transaction has not

been cleared by the time the requirement starts to apply to the person.

### **901B Derivatives in relation to which rules may impose requirements**

*Requirements can only be imposed in relation to derivatives covered by a determination under this section*

- (1) The derivative transaction rules cannot impose execution requirements, reporting requirements, or clearing requirements, in relation to derivative transactions unless the derivatives to which the transactions relate are covered by a determination under this section that relates to requirements of that kind.

*Minister may determine classes of derivatives in relation to which requirements may be imposed*

- (2) The Minister may, by legislative instrument, determine one or more classes of derivatives in relation to which execution requirements, reporting requirements, or clearing requirements, may be imposed.

Note 1: Different determinations may be made in relation to the different kinds of requirements.

Note 2: A class of derivatives can be described by reference to any matter, including (for example):

- (a) the kind of asset, rate, index or commodity to which the derivatives relate; or
- (b) the time when the derivatives were issued, or their date of maturity.

*Making determinations: matters to which the Minister has regard*

- (3) In considering whether to make a determination under subsection (2) that would have the effect of allowing the derivative transaction rules to impose requirements of a particular kind in relation to certain derivatives, the Minister:
- (a) must have regard to:
    - (i) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system, of allowing the derivative transaction rules to impose requirements of that kind in relation to those derivatives; and



- (ii) the likely regulatory impact of allowing the derivative transaction rules to impose requirements of that kind in relation to those derivatives; and
  - (iii) if those derivatives are or include commodity derivatives—the likely impact, on any Australian market or markets on which the commodities concerned may be traded, of allowing the derivative transaction rules to impose requirements of that kind in relation to those commodity derivatives; and
- (b) may have regard to any other matters that the Minister considers relevant.

Note: Matters that the Minister may have regard to under paragraph (b) may, for example, include:

- (a) any relevant international standards and international commitments; and
- (b) matters raised in consultations under subsection (4), or in advice under subsection (6).

*Making determinations: obligation to consult*

- (4) The Minister must not make a determination under subsection (2) unless the Minister has consulted ASIC, APRA and the Reserve Bank of Australia about the proposed determination.
- (5) A failure to consult as required by subsection (4) does not invalidate a determination.

*ASIC, APRA or Reserve Bank may advise Minister*

- (6) ASIC, APRA or the Reserve Bank of Australia may (on its own initiative or at the request of the Minister):
  - (a) consider whether a determination should be made under subsection (2) that would have the effect of allowing the derivative transaction rules to impose requirements of a particular kind in relation to certain derivatives; and
  - (b) advise the Minister accordingly.

*Amendment and revocation of determinations*

- (7) The Minister may amend or revoke a determination under subsection (2) in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

**901C Regulations may limit the transactions in relation to which rules may impose requirements**

The regulations may provide that the derivative transaction rules:

- (a) cannot impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions; or
- (b) can only impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions in certain circumstances.

Note: A class of derivative transactions can be described by reference to any matter, including (for example):

- (a) the derivatives to which transactions relate; or
- (b) the circumstances in which transactions were entered into; or
- (c) the time when, or place where, transactions were entered into; or
- (d) the parties to transactions.

**901D Regulations may limit the persons on whom requirements may be imposed**

The regulations may provide that the derivative transaction rules:

- (a) cannot impose requirements (or certain kinds of requirements) on certain classes of persons; or
- (b) can only impose requirements (or certain kinds of requirements) on certain classes of persons in certain circumstances.

Note: A class of persons may be described by reference to any matter, including (for example):

- (a) the volume of derivative transactions entered into by persons over a period; or
- (b) the characteristics or nature of persons or of their businesses; or
- (c) the place of residence or business of persons.

**Subdivision B—Compliance with derivative transaction rules**

**901E Obligation to comply with derivative transaction rules**

- (1) A person must comply with provisions of the derivative transaction rules that apply to the person.

Note: This section is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this section, see section 1317S.

- (2) If there is an inconsistency between the derivative transaction rules and the derivative trade repository rules, the derivative transaction rules prevail to the extent of the inconsistency.

Note 1: If there is an inconsistency between the market integrity rules and the derivative transaction rules, the market integrity rules prevail: see subsection 798H(3).

Note 2: If there is an inconsistency between the standards determined under section 827D and the derivative transaction rules, the standards prevail: see subsection 827D(2A).

### **901F Alternatives to civil proceedings**

- (1) The regulations may provide for a person who is alleged to have contravened section 901E to do one or more of the following as an alternative to civil proceedings:
- (a) pay a penalty to the Commonwealth;
  - (b) undertake or institute remedial measures (including education programs);
  - (c) accept sanctions other than the payment of a penalty to the Commonwealth;
  - (d) enter into a legally enforceable undertaking.
- (2) The penalty payable under regulations made under paragraph (1)(a) in relation to a derivative transaction rule must not exceed one-fifth of the penalty amount specified for the rule in the derivative transaction rules.
- (3) Without limiting regulations that may be made for the purpose of paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
- (a) an undertaking to take specified action within a specified period;
  - (b) an undertaking to refrain from taking specified action;
  - (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

### **901G Failure to comply with derivative transaction rules does not invalidate transaction etc.**

A failure, in relation to a derivative transaction, to comply with a requirement of the derivative transaction rules does not invalidate

the transaction or affect any rights or obligations arising under, or relating to, the transaction.

### **Subdivision C—The process of making of derivative transaction rules**

#### **901H Matters to which ASIC must have regard when making rules**

In considering whether to make a derivative transaction rule, ASIC:

- (a) must have regard to:
  - (i) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
  - (ii) the likely regulatory impact of the proposed rule; and
  - (iii) if the transactions to which the proposed rule would relate would be or include transactions relating to commodity derivatives—the likely impact of the proposed rule on any Australian market or markets on which the commodities concerned may be traded; and
- (b) may have regard to any other matters that ASIC considers relevant.

Note: Matters that ASIC may have regard to under paragraph (b) may, for example, include:

- (a) any relevant international standards and international commitments; and
- (b) matters raised in consultations (if any) under section 901J.

#### **901J ASIC to consult before making rules**

- (1) ASIC must not make a derivative transaction rule unless ASIC:
  - (a) has consulted the public about the proposed rule; and
  - (b) has also consulted the following about the proposed rule:
    - (i) APRA;
    - (ii) the Reserve Bank of Australia;
    - (iii) any other person or body as required by regulations made for the purpose of this subparagraph.

Note: In some situations, consultation is not required: see section 901L.

- (2) Without limiting the ways in which ASIC may comply with the obligation in paragraph (1)(a) to consult the public about a

proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:

- (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
  - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a derivative transaction rule.

### **901K Ministerial consent to rules required**

- (1) ASIC must not make a derivative transaction rule unless the Minister has consented, in writing, to the making of the rule.

Note: In some situations, consent is not required: see section 901L.

- (2) A consent under subsection (1) is not a legislative instrument.

### **901L Emergency rules: consultation and consent not required**

- (1) ASIC may make a derivative transaction rule without consulting as required by section 901J, and without the consent of the Minister as required by section 901K, if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:

- (a) the Australian economy; or
- (b) the efficiency, integrity and stability of the Australian financial system.

- (2) However, if ASIC does so, ASIC must:

- (a) provide the Minister, on the following day, with a written explanation of the need for the rule; and
- (b) amend or revoke the rule in accordance with any written directions of the Minister.

- (3) A direction under paragraph (2)(b) is not a legislative instrument.

### **901M Amendment and revocation of derivative transaction rules**

- (1) ASIC may amend or revoke a derivative transaction rule in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

- (2) However, the requirements of sections 901H, 901J and 901K do not apply in relation to an amendment or revocation pursuant to a direction by the Minister under paragraph 901L(2)(b).

### **Division 3—Regulation of licensed derivative trade repositories: supervision by ASIC**

#### **902A ASIC to supervise licensed derivative trade repositories**

- (1) ASIC has the function of supervising licensed derivative trade repositories.
- (2) If a licensed derivative trade repository is wholly or partly operated in a foreign country, ASIC may, to such extent as ASIC considers appropriate, perform the function of supervising the repository by satisfying itself:
- (a) that the regulatory regime that applies in relation to the repository in that country provides for adequate supervision of the repository; or
  - (b) that adequate cooperative arrangements are in place with an appropriate authority of that country to ensure that the repository will be adequately supervised by that authority.

### **Division 4—Regulation of licensed derivative trade repositories: derivative trade repository rules**

#### **Subdivision A—Power to make derivative trade repository rules**

#### **903A ASIC may make derivative trade repository rules**

*Power to make derivative trade repository rules*

- (1) Subject to this Division, ASIC may, by legislative instrument, make rules (*derivative trade repository rules*) dealing with matters as permitted by this section.

Note: Subdivision C deals with the process of making derivative trade repository rules.

*Main matters that may be dealt with in derivative trade repository rules*

- (2) The derivative trade repository rules may (subject to this Division) deal with all or any of the following matters (including by imposing requirements for or relating to any of the following matters):
- (a) the manner in which licensed derivative trade repositories provide their services;
  - (b) the handling or use of derivative trade data by licensed derivative trade repositories and their officers and employees, including the following:
    - (i) the acceptance and retention of derivative trade data;
    - (ii) the creation of statistical data from derivative trade data;
    - (iii) the use and disclosure of, and provision of access to, derivative trade data (including statistical data referred to in subparagraph (ii));
  - (c) the governance, management and resources (including financial, technological and human resources) of licensed derivative trade repositories, including the following:
    - (i) the handling of conflicts of interest;
    - (ii) the monitoring and enforcement of compliance with obligations;
    - (iii) the resources that licensed derivative trade repositories should have (including requirements relating to the experience, qualifications or fitness for office of operators and their officers and employees);
    - (iv) the integrity and security of computer systems and other systems;
    - (v) operational reliability;
    - (vi) business continuity planning;
    - (vii) the operational separation of functions;
    - (viii) the outsourcing of functions to other entities;
  - (d) the disclosure of conditions (including fees) on which licensed derivative trade repositories provide their services;
  - (e) the reporting to ASIC or other regulators of matters related to licensed derivative trade repositories.

Note: Paragraph (a): the rules may (for example) require licensed derivative trade repositories to provide open and non-discriminatory access to their services.

*Other matters that may be dealt with in derivative trade repository rules*

- (3) The derivative trade repository rules may also (subject to this Division) deal with matters incidental or related to matters referred to in subsection (2), including any of the following:
- (a) specifying the persons (being persons referred to in section 903B) who are required to comply with requirements imposed by the rules;
  - (b) the manner and form in which persons must comply with requirements imposed by the rules;
  - (c) the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them;
  - (d) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules;
  - (e) any other matters that the provisions of this Act provide may be dealt with in the derivative trade repository rules.

*Penalty amounts*

- (4) The derivative trade repository rules may specify a penalty amount for a rule. A penalty amount must not exceed 1,000 penalty units.

*Rules may provide that derivative trade data is taken to be given to ASIC in confidence*

- (5) The derivative trade repository rules may provide, either generally or in circumstances specified in the rules, that information given to ASIC, by the operator (or an officer of the operator) of a licensed derivative trade repository, under a provision of:
- (a) this Part; or
  - (b) regulations made for the purpose of this Part; or
  - (c) the derivative transaction rules or the derivative trade repository rules;

is to be taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC's functions under this Act.



- (6) Derivative trade repository rules that provide as mentioned in subsection (5) have effect accordingly for the purpose of section 127 of the ASIC Act.

Note: Subsections (5) and (6) do not limit the circumstances in which information given to ASIC by a licensed derivative trade repository may, for the purpose of section 127 of the ASIC Act, be regarded as having been given to ASIC in confidence in connection with the performance of ASIC's functions under this Act.

### **903B Rules may only impose requirements on operators and officers of licensed derivative trade repositories**

The only persons on whom the derivative trade repository rules may impose requirements are:

- (a) operators of licensed derivative trade repositories; and
- (b) officers of licensed derivative trade repositories.

Note: Requirements may also be imposed on these persons by the derivative transaction rules.

### **903C Regulations may limit how rules may deal with matters related to derivative trade data**

The regulations may prescribe limits on the extent to which, or the way in which, the derivative trade repository rules may deal with matters referred to in paragraph 903A(2)(b).

### **Subdivision B—Compliance with derivative trade repository rules**

#### **903D Obligation to comply with derivative trade repository rules**

A person must comply with provisions of the derivative trade repository rules that apply to the person.

Note 1: This section is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this section, see section 1317S.

Note 2: The only persons on whom derivative trade repository rules may impose requirements are operators of licensed derivative trade repositories, and officers of such operators (see section 903B).

Note 3: If there is an inconsistency between the market integrity rules and the derivative trade repository rules, the market integrity rules prevail: see subsection 798H(3).

Note 4: If there is an inconsistency between the standards determined under section 827D and the derivative trade repository rules, the standards prevail: see subsection 827D(2A).

Note 5: If there is an inconsistency between the derivative transaction rules and the derivative trade repository rules, the derivative transaction rules prevail: see subsection 901E(2).

### **903E Alternatives to civil proceedings**

- (1) The regulations may provide for a person who is alleged to have contravened section 903D to do one or more of the following as an alternative to civil proceedings:
  - (a) pay a penalty to the Commonwealth;
  - (b) undertake or institute remedial measures (including education programs);
  - (c) accept sanctions other than the payment of a penalty to the Commonwealth;
  - (d) enter into a legally enforceable undertaking.
- (2) The penalty payable under regulations made under paragraph (1)(a) in relation to a derivative trade repository rule must not exceed one-fifth of the penalty amount specified for the rule in the derivative trade repository rules.
- (3) Without limiting regulations that may be made for the purpose of paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
  - (a) an undertaking to take specified action within a specified period;
  - (b) an undertaking to refrain from taking specified action;
  - (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

### **Subdivision C—The process of making derivative trade repository rules**

#### **903F Matters to which ASIC has regard when making rules**

In considering whether to make a derivative trade repository rule, ASIC:

- (a) must have regard to:

- (i) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
  - (ii) the likely regulatory impact of the proposed rule; and
- (b) may have regard to any other matters that ASIC considers relevant.

Note: Matters that ASIC may have regard to under paragraph (b) may, for example, include:

- (a) any relevant international standards and international commitments; and
- (b) matters raised in consultations (if any) under section 903G.

### **903G ASIC to consult before making rules**

- (1) ASIC must not make a derivative trade repository rule unless ASIC:
- (a) has consulted the public about the proposed rule; and
  - (b) has also consulted any other person or body as required by regulations made for the purpose of this paragraph.

Note: In some situations, consultation is not required: see section 903J.

- (2) Without limiting the ways in which ASIC may comply with the obligation in paragraph (1)(a) to consult the public about a proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:
- (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
  - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a derivative trade repository rule.

### **903H Ministerial consent to rules required**

- (1) ASIC must not make a derivative trade repository rule unless the Minister has consented, in writing, to the making of the rule.

Note: In some situations, consent is not required: see section 903J.

- (2) A consent under subsection (1) is not a legislative instrument.

### **903J Emergency rules: consultation and consent not required**

- (1) ASIC may make a derivative trade repository rule without consulting as required by section 903G, and without the consent of the Minister as required by section 903H, if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:
  - (a) the Australian economy; or
  - (b) the efficiency, integrity and stability of the Australian financial system; or
  - (c) the security or confidentiality of derivative trade data.
- (2) However, if ASIC does so, ASIC must:
  - (a) provide the Minister, on the following day, with a written explanation of the need for the rule; and
  - (b) amend or revoke the rule in accordance with any written directions of the Minister.
- (3) A direction under paragraph (2)(b) is not a legislative instrument.

### **903K Amendment and revocation of derivative trade repository rules**

- (1) ASIC may amend or revoke a derivative trade repository rule in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).
- (2) However, the requirements of sections 903F, 903G and 903H do not apply in relation to an amendment or revocation pursuant to a direction by the Minister under paragraph 903J(2)(b).

## **Division 5—Regulation of licensed derivative trade repositories: other obligations and powers**

### **Subdivision A—Obligations**

#### **904A General obligations**

- A derivative trade repository licensee must:
- (a) comply with the conditions on the licence; and

- (b) if the licensee is a foreign body corporate—be registered under Division 2 of Part 5B.2; and
- (c) take all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the operator (see Division 2 of Part 7.4).

Note: Derivative trade repository licensees must also comply with other provisions of this Part that apply to them.

## **904B Obligations relating to derivative trade data**

### *Obligation relating to use or disclosure of derivative trade data*

- (1) A derivative trade repository licensee, or an officer or employee of a derivative trade repository licensee, may use or disclose derivative trade data only if:
  - (a) the use or disclosure:
    - (i) is for the purpose of, or occurs in the course of, the provision of the repository's services, or the performance of the duties of the officer or employee as an officer or employee of the licensee; and
    - (ii) is not excluded by regulations made for the purpose of this subparagraph; or
  - (b) the use or disclosure is required or permitted by any of the following:
    - (i) another provision of this Act;
    - (ii) the derivative transaction rules or the derivative trade repository rules;
    - (iii) another law of the Commonwealth, or a law of a State or Territory.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

### *Obligation to comply with requests from regulators for derivative trade data*

- (2) Any of the following persons or bodies may request a derivative trade repository licensee to provide the person or body with derivative trade data that is retained in the derivative trade repository:
  - (a) ASIC;
  - (b) APRA;

- (c) the Reserve Bank of Australia;
  - (d) a person or body prescribed by the regulations for the purpose of this paragraph;
  - (e) another derivative trade repository licensee.
- (3) Regulations must not be made prescribing a person or body for the purpose of paragraph (2)(d) unless the Minister is satisfied that there are adequate controls on the use or disclosure of any derivative trade data provided to the person or body pursuant to requests under subsection (2).
- (4) The regulations may require that certain information must not be included in derivative trade data provided pursuant to requests, or a class of requests, under subsection (2).
- (5) If:
- (a) a derivative trade repository licensee receives a request for derivative trade data under subsection (2); and
  - (b) the licensee is not excused or prohibited from complying with the request by:
    - (i) regulations made for the purpose of this subparagraph; or
    - (ii) the derivative trade repository rules or the derivative transaction rules;
- the licensee must comply with the request, subject to any requirements of regulations made for the purpose of subsection (4).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*Obligations relating to the creation of statistical data*

- (6) The regulations may:
- (a) impose obligations on operators of licensed derivative trade repositories to:
    - (i) create statistical information from derivative trade data; and
    - (ii) to provide that statistical information to a person or persons, or to make it available, in accordance with the regulations; and
  - (b) provide for offences in relation to those obligations.

Note: For the limit on penalties for offences against the regulations, see paragraph 1364(2)(w).

### **904C Obligation to notify ASIC of certain matters**

#### *Notification of inability to meet obligations under 904A*

- (1) A derivative trade repository licensee must give written notice to ASIC, as soon as practicable, if the licensee becomes aware that it may no longer be able to meet, or has breached, an obligation under section 904A.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (2) If ASIC receives a notice under subsection (1), ASIC may give the Minister advice about the matter to which the notice relates.

#### *Notification of changes to directors, secretaries or senior managers*

- (3) As soon as practicable after a person becomes or ceases to be a director, secretary or senior manager of a derivative trade repository licensee or of a holding company of a derivative trade repository licensee (including when a person changes from one of those positions to another), the licensee must give written notice of this to ASIC. The notice must include such other information about the matter as is prescribed by the regulations for the purpose of this subsection.

Note 1: To the extent that the licensee is required to give the notice and information under any other provision of this Act, the licensee may comply with this subsection by doing so. It need not provide the same information twice.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

### **904D Obligation to assist ASIC, APRA and the Reserve Bank**

- (1) Each of the following is a regulator to which this section applies:
  - (a) ASIC;
  - (b) APRA;
  - (c) the Reserve Bank of Australia.

- (2) A derivative trade repository licensee must give such assistance to a regulator to which this section applies as the regulator reasonably requests in relation to the performance of the regulator's functions.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (3) Such assistance may include showing the regulator the licensee's books or giving the regulator derivative trade data or other information.

#### **904E Obligation to give ASIC access to derivative trade repository facilities**

A derivative trade repository licensee must give ASIC such reasonable access to the repository's facilities as ASIC requests for any of the purposes of this Part.

Note: Failure to comply with this section is an offence (see subsection 1311(1)).

#### **Subdivision B—Powers of Minister and ASIC to give directions etc.**

#### **904F Minister's power to give directions to licensee not complying with obligations**

- (1) If the Minister considers that a derivative trade repository licensee is not complying with its obligations as a derivative trade repository licensee under this Part, the Minister may give the licensee a written direction to do specified things that the Minister believes will promote compliance by the licensee with those obligations.
- (2) The licensee must comply with the direction.
- (3) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.
- (4) The Minister may vary or revoke a direction at any time by giving written notice to the licensee.



**904G ASIC's power to give directions to licensee not complying with obligations**

- (1) If ASIC considers that a derivative trade repository licensee is not complying with its obligations as a derivative trade repository licensee under this Part, ASIC may give the licensee written advice that it intends to give the licensee a specified direction to do specified things that ASIC believes will promote compliance by the licensee with those obligations. The advice must include the reasons for ASIC's intention to give the direction.
- (2) As soon as practicable after giving the advice to the licensee, ASIC must give notice of the advice to the operator of each financial market, and of each clearing and settlement facility, with which the licensed derivative trade repository has arrangements to provide services relating to derivative trade data.
- (3) If:
  - (a) after receiving ASIC's advice and reasons, the licensee does not take steps that in ASIC's view are adequate to address the situation; and
  - (b) ASIC still considers that it is appropriate to give the direction to the licensee;ASIC may give the licensee the direction, in writing, with a statement setting out the reasons for giving the direction.
- (4) The direction has effect until the earlier of the following times:
  - (a) the time ASIC revokes the direction under subsection (9);
  - (b) the end of the period (which may be up to 21 days) specified in the direction as the period during which the direction is effective.
- (5) While the direction has effect, the licensee must comply with the direction.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (6) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

- (7) As soon as practicable after making or varying (see subsection (8)) the direction, ASIC must give a copy of the direction or variation to each of the operators referred to in subsection (2).
- (8) ASIC may vary the direction by giving written notice to the licensee.
- (9) ASIC may revoke the direction by giving written notice to the licensee. ASIC must also give written notice of the revocation to each of the operators mentioned in subsection (2).

#### **904H ASIC's power to give directions requiring special reports**

- (1) ASIC may give a derivative trade repository licensee a written direction requiring the licensee to give ASIC a special report on specified matters. ASIC may give a copy of the report to the Minister.
- (2) The direction may also require the licensee to give ASIC an audit report on the special report. ASIC must nominate a specified person or body that is suitably qualified to prepare the audit report.
- (3) The licensee must give the special report, and audit report (if required), to ASIC within the time required by the direction.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

#### **904J ASIC may assess licensee's compliance**

- (1) ASIC may do an assessment of how well a derivative trade repository licensee is complying with any or all of its obligations as a derivative trade repository licensee under this Part. In doing the assessment, ASIC may take account of any information and reports that it thinks appropriate.
- (2) As soon as practicable after doing an assessment under this section, ASIC must give a written report on the assessment to the licensee. ASIC may give a copy of the report to the Minister.
- (3) If an assessment, or part of an assessment, relates to any other person's affairs to a material extent, ASIC may, at the person's request or on its own initiative, give the person a copy of the report on the assessment or the relevant part of the report.

- (4) If an assessment, or part of an assessment, relates to a serious contravention of a law of the Commonwealth or of a State or Territory, ASIC may give a copy of the report on the assessment, or the relevant part of the report, to:
  - (a) the Australian Federal Police; or
  - (b) the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*); or
  - (c) the Director of Public Prosecutions; or
  - (d) a person or body prescribed by the regulations for the purpose of this paragraph.
- (5) The written report on an assessment, or part of the report, may be published in any way that ASIC thinks appropriate.
- (6) A report on an assessment is not a legislative instrument.

**904K Directions relating to derivative trade data if repository ceases to be licensed**

- (1) This section applies to derivative trade data that was being retained in a derivative trade repository before the repository ceased to be a licensed derivative trade repository.
  - (2) ASIC may give a written direction to a person referred to in subsection (3):
    - (a) requiring the person to deal, in a specified way, with derivative trade data to which this section applies; or
    - (b) imposing limitations on the use or disclosure by the person of derivative trade data to which this section applies.
- Note: A direction could, for example, require the person:
- (a) to destroy all records of the data over which the person has control; or
  - (b) to transfer all records of the data over which the person has control to a licensed derivative trade repository or a prescribed derivative trade repository.
- (3) The direction may be given to:
    - (a) the operator, or former operator, of the repository; or
    - (b) an officer or employee, or a former officer or employee, of the operator, or former operator, of the repository.

- (4) While the direction has effect, the person to whom the direction is given must comply with the direction.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (5) If the person to whom the direction is given fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the person comply with the direction.
- (6) The direction has effect until it is revoked under subsection (7).
- (7) ASIC may vary or revoke the direction by giving written notice to the person to whom the direction was given.

## **Division 6—Regulation of licensed derivative trade repositories: licensing**

### **Subdivision A—Requirement for some trade repositories to be licensed**

#### **905A Regulations may identify derivative trade repositories as being required to be licensed**

- (1) The regulations may identify one or more classes of derivative trade repositories as being required to be licensed under this Part.

Note: Subject to this Part, derivative trade repositories may be licensed under this Part even if they are not required to be licensed.

- (2) If the regulations identify a class of derivative trade repositories as being required to be licensed under this Part, a person must not operate, or hold out that the person operates, a repository in the class if the person does not have an Australian derivative trade repository licence that authorises the person to operate the repository.

Note 1: Failure to comply with this subsection is an offence: see subsection 1311(1).

Note 2: For other offences dealing with holding out, see section 907A.

## **Subdivision B—Granting of licences**

### **905B How to apply for a licence**

A body corporate may, by lodging an application with ASIC in the prescribed form, apply for a licence (an *Australian derivative trade repository licence*) authorising the body corporate to operate a derivative trade repository.

Note 1: See section 350 for how to lodge an application in the prescribed form.

Note 2: For fees in respect of lodging applications, see Part 9.10.

### **905C When a licence may be granted**

#### *General*

- (1) ASIC may grant an applicant an Australian derivative trade repository licence if ASIC is satisfied that:
  - (a) the application was made in accordance with section 905B; and
  - (b) the applicant will comply with the obligations that will apply if the licence is granted; and
  - (c) no disqualified individual appears to be involved in the applicant (see Division 2 of Part 7.4).

This subsection has effect subject to subsections (2) and (3).

Note: ASIC must also have regard to the matters in section 905P in deciding whether to grant a licence.

#### *Foreign bodies*

- (2) If the applicant is a foreign body corporate, ASIC must not grant the applicant a licence unless the applicant is registered under Division 2 of Part 5B.2.

#### *Disqualified individuals*

- (3) ASIC must not grant the applicant a licence unless 42 days have passed since the application was made and ASIC has not given a notice under subsection 853D(2) to the applicant within that 42 days.

### **905D Publication of notice of licence grant**

If ASIC grants an Australian derivative trade repository licence, ASIC must publish a notice in the *Gazette* stating:

- (a) the name of the licensee; and
- (b) when the licence was granted; and
- (c) the conditions on the licence.

### **905E More than one derivative trade repository covered by the same licence**

- (1) The same Australian derivative trade repository licence may authorise the licensee to operate 2 or more derivative trade repositories.
- (2) In that case, a reference in this Chapter to the derivative trade repository to which an Australian derivative trade repository licence relates is taken instead to be a reference to each of those derivative trade repositories severally.
- (3) Before varying the conditions on an Australian derivative trade repository licence so as to add another derivative trade repository that the licensee is authorised to operate, ASIC must be satisfied of the matters listed in subsection 905C(1) in relation to the repository.
- (4) An Australian derivative trade repository licence that authorises the licensee to operate 2 or more derivative trade repositories may be suspended or cancelled under Subdivision D in respect of one or some of those repositories only, as if the licensee held a separate licence for each of the repositories.

### **Subdivision C—The conditions on a licence**

#### **905F The conditions on the licence**

- (1) ASIC may, at any time:
  - (a) impose conditions, or additional conditions, on an Australian derivative trade repository licence; or
  - (b) vary or revoke conditions imposed on such a licence;

by giving written notice to the licensee. ASIC must also publish a notice in the *Gazette* with details of the action and when it took effect.

Note: As well as the requirements in this section, ASIC must also have regard to the matters in section 905P.

(2) ASIC may do so:

- (a) on its own initiative, subject to subsection (3); or
- (b) if the licensee lodges an application with ASIC in the prescribed form, seeking the imposition of the conditions or additional conditions, or seeking the variation or revocation of conditions.

Note 1: See section 350 for how to lodge an application in the prescribed form.

Note 2: For fees in respect of lodging applications, see Part 9.10.

(3) ASIC may only impose conditions or additional conditions, or vary or revoke conditions, on the licence on ASIC's own initiative if:

- (a) ASIC considers it appropriate to do so having regard to:
  - (i) the licensee's obligations as a derivative trade repository licensee under this Part; and
  - (ii) any change in the operations of the derivative trade repository, or in the conditions in which the repository is operating; and
- (b) ASIC gives the licensee written notice of the proposed action and an opportunity to make a submission before it takes effect.

This subsection does not apply to ASIC imposing conditions when a licence is granted.

(4) ASIC must ensure that each Australian derivative trade repository licence is subject to conditions that specify:

- (a) the particular derivative trade repository that the licensee is authorised to operate; and
- (b) the class or classes of derivatives in respect of which the repository can provide services for the purposes of this Part.

Note: The licence condition required by paragraph (b) does not apply to services that a licensed derivative trade repository provides otherwise than for the purposes of this Part.

## **Subdivision D—When a licence can be varied, suspended or cancelled**

### **905G Varying licences**

ASIC may vary an Australian derivative trade repository licence to take account of a change in the licensee's name if the licensee lodges an application with ASIC in the prescribed form, seeking the variation.

Note 1: The conditions on the licence can be varied under section 905F.

Note 2: See section 350 for how to lodge an application in the prescribed form.

Note 3: For fees in respect of lodging applications, see Part 9.10.

### **905H Immediate suspension or cancellation**

ASIC may, by giving written notice to a derivative trade repository licensee, suspend the licence for a specified period, or cancel it, if:

- (a) the licensee ceases to carry on the business of operating the derivative trade repository; or
- (b) the licensee becomes an externally-administered body corporate; or
- (c) the licensee asks ASIC to do so.

### **905J Suspension or cancellation following hearing and report**

- (1) If ASIC considers that a derivative trade repository licensee has breached, or is in breach of, one or more of its obligations as a derivative trade repository licensee under this Part, ASIC may give the licensee a written notice that requires the licensee to show cause, at a hearing before a specified person, why the licence should not be suspended or cancelled.
- (2) The notice must specify:
  - (a) the grounds on which it is proposed to suspend or cancel the licence; and
  - (b) a reasonable time and place at which the hearing is to be held.

However, if the licensee consents, the person conducting the hearing may fix a different time or place.



- (3) The person conducting the hearing must:
- (a) give the licensee an opportunity to be heard at the hearing; and
  - (b) give ASIC:
    - (i) a report about the hearing; and
    - (ii) a recommendation about the grounds in the notice on which it is proposed to suspend or cancel the licence.
- (4) After considering the report and recommendation, ASIC may:
- (a) decide to take no further action in relation to the matter and give written advice of that decision to the licensee; or
  - (b) suspend the licence for a specified period, or cancel the licence, by giving written notice to the licensee.
- Note: ASIC must also have regard to the matters in section 905P.
- (5) None of the following is a legislative instrument:
- (a) a notice under subsection (1);
  - (b) a report under subsection (3) (if it is in writing).

#### **905K Effect of suspension**

- (1) A person whose Australian derivative trade repository licence is suspended is taken not to hold that licence while it is suspended.
- (2) However, ASIC may specify in the written notice to the licensee under section 905H, or paragraph 905J(4)(b), that subsection (1) of this section does not apply for specified purposes.

#### **905L Variation or revocation of suspension**

ASIC may at any time vary or revoke a suspension of an Australian derivative trade repository licence by giving written notice to the licensee.

#### **905M Publication of notice of licence suspension or cancellation**

- (1) If ASIC:
  - (a) suspends, or varies or revokes a suspension of, an Australian derivative trade repository licence; or
  - (b) cancels an Australian derivative trade repository licence;ASIC must publish a notice in the *Gazette* to that effect.

- (2) The notice must state when the action took effect.

**905N Suspension and cancellation only in accordance with this Subdivision**

An Australian derivative trade repository licence cannot be varied, suspended or cancelled otherwise than in accordance with this Subdivision.

Note: The conditions on the licence can be varied under section 905F.

**Subdivision E—Other matters**

**905P Matters to be taken into account by ASIC**

- (1) ASIC must have regard to certain matters in deciding whether to:
- (a) grant an applicant an Australian derivative trade repository licence under section 905C; or
  - (b) impose, vary or revoke conditions on such a licence under section 905F; or
  - (c) suspend or cancel such a licence under section 905J.
- (2) The matters ASIC must have regard to are as follows:
- (a) the structure, or proposed structure, of the derivative trade repository;
  - (b) the nature of the activities conducted, or proposed to be conducted, by the derivative trade repository;
  - (c) the size, or proposed size, of the derivative trade repository;
  - (d) the persons who are, or may be, required to report derivative trade data to the derivative trade repository;
  - (e) the technology used, or proposed to be used, in the operation of the derivative trade repository;
  - (f) whether it would be in the public interest to take the action referred to in subsection (1).

ASIC may also have regard to any other matter that ASIC considers relevant.

## **Division 7—Regulation of prescribed derivative trade repositories**

### **906A Regulations may impose obligations and confer powers**

- (1) The regulations may:
  - (a) impose obligations on operators of prescribed derivative trade repositories, and on their officers and employees; and
  - (b) confer powers on ASIC in relation to prescribed derivative trade repositories; and
  - (c) provide for offences in relation to those obligations and powers.
- (2) Without limiting the obligations and powers that may be conferred or imposed, they may include obligations and powers of similar kinds to those that apply under the derivative trade repository rules, or under Division 5, in relation to licensed derivative trade repositories.
- (3) The regulations may provide, either generally or in circumstances specified in the regulations, that information given to ASIC, by the operator (or an officer of the operator) of a prescribed derivative trade repository, under a provision of the regulations is to be taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC's functions under this Act.
- (4) Regulations that provide as mentioned in subsection (3) have effect accordingly for the purpose of section 127 of the ASIC Act.

Note: Subsections (3) and (4) do not limit the circumstances in which information given to ASIC by a prescribed derivative trade repository may, for the purpose of section 127 of the ASIC Act, be regarded as having been given to ASIC in confidence in connection with the performance of ASIC's functions under this Act.

## **Division 8—Other matters**

### **907A Other prohibitions on holding out**

A person must not hold out:

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- (a) that the person has an Australian derivative trade repository licence; or
- (b) that the operation of a derivative trade repository by the person is authorised by an Australian derivative trade repository licence; or
- (c) that a facility is prescribed by the regulations for the purpose of paragraph 901A(5)(b); or
- (d) that a facility is prescribed by the regulations for the purpose of paragraph 901A(6)(b); or
- (e) that a facility is prescribed by the regulations for the purpose of paragraph 901A(7)(b);

if that is not the case.

Note 1: Failure to comply with this subsection is an offence: see subsection 1311(1).

Note 2: Section 905A contains other offences relating to derivative trade repositories that are required to be licensed.

### **907B Making provision by reference to instruments as in force from time to time**

- (1) This section applies to the following instruments:
  - (a) determinations made by the Minister under section 901B;
  - (b) regulations made for the purpose of a provision of this Part;
  - (c) derivative transaction rules;
  - (d) derivative trade repository rules.
- (2) An instrument to which this section applies may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (3) Subsection (2) has effect despite subsection 14(2) of the *Legislative Instruments Act 2003*.

### **907C Compliance with requirements to provide derivative trade data or other information: protection from liability**

If:

- (a) a person (the *protected person*):

- (i) provides derivative trade data, or other information, to another person; or
  - (ii) otherwise allows another person access to derivative trade data, or other information; and
  - (b) the protected person does so, in good faith, in compliance with a requirement imposed by or under:
    - (i) a provision of this Part, or of regulations made for the purpose of a provision of this Part; or
    - (ii) a provision of the derivative transaction rules or the derivative trade repository rules;
- the protected person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to that conduct.

### **907D Exemptions by ASIC**

- (1) The *provisions covered by this section* are:
  - (a) the following provisions:
    - (i) the provisions of this Part;
    - (ii) the provisions of regulations made for the purposes of the provisions of this Part;
    - (iii) the provisions of the derivative transaction rules and the derivative trade repository rules; and
  - (b) definitions in this Act, or in the regulations, as they apply to references in provisions referred to in paragraph (a).
- (2) ASIC may:
  - (a) exempt a person or class of persons from all or specified provisions covered by this section; or
  - (b) exempt a facility or class of facilities from all or specified provisions covered by this section; or
  - (c) exempt a derivative transaction or class of derivative transactions from all or specified provisions covered by this section.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

- (4) An exemption is a legislative instrument if the exemption is expressed to apply in relation to a class of persons, a class of facilities or a class of derivative transactions (whether or not it is also expressed to apply in relation to one or more persons, facilities or transactions identified otherwise than by reference to membership of a class).
- (5) If subsection (4) does not apply to an exemption, the exemption must be in writing and ASIC must publish notice of it in the *Gazette*.

### **907E Exemptions and modifications by regulations**

- (1) The *provisions covered by this section* are:
  - (a) the following provisions:
    - (i) the provisions of this Part;
    - (ii) the provisions of regulations made for the purposes of the provisions of this Part;
    - (iii) the provisions of the derivative transaction rules and the derivative trade repository rules; and
  - (b) definitions in this Act, or in the regulations, as they apply to references in provisions referred to in paragraph (a).
- (2) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions covered by this section; or
  - (b) exempt a facility or class of facilities from all or specified provisions covered by this section; or
  - (c) exempt a derivative transaction or class of derivative transactions from all or specified provisions covered by this section; or
  - (d) declare that provisions covered by this section apply in relation to a person, facility or derivative transaction, or a class of persons, facilities or derivative transactions, as if specified provisions were omitted, modified or varied as specified in the declaration.

### **33 Subparagraph 1101B(1)(a)(ii)**

After “Australian CS facility licence”, insert “, Australian derivative trade repository licence”.

**34 Subparagraph 1101B(4)(a)(iii)**

After “Australian CS facility licence”, insert “, Australian derivative trade repository licence”.

**35 Paragraph 1101B(4)(b)**

Omit “the market integrity rules”, substitute “a provision of the market integrity rules, or of the derivative transaction rules or the derivative trade repository rules,”.

**36 Subparagraphs 1101B(4)(c)(i) and (4)(d)(i)**

Omit “the market integrity rules”, substitute “a provision of the market integrity rules, or of the derivative transaction rules or the derivative trade repository rules,”.

**37 After paragraph 1317C(gd)**

Insert:

- (gda) a decision by the Minister:
  - (i) to make a determination under section 901B, or to amend or revoke such a determination; or
  - (ii) to consent, under section 901K or 903H, to the making of a derivative transaction rule or a derivative trade repository rule, or to consent to the variation or revocation of such a rule; or
  - (iii) to direct ASIC, under section 901L or 903J, to amend or revoke a derivative transaction rule or a derivative trade repository rule; or
- (gdb) a decision by ASIC to make derivative transaction rules or derivative trade repository rules under section 901A or 903A, or to vary or revoke such rules; or
- (gdc) a decision by ASIC to do or not do anything under regulations made for the purpose of section 901F or 903E; or

**38 After paragraph 1317E(1)(jaac)**

Insert:

- (jaaca) section 901E (complying with derivative transaction rules);
- (jaacb) section 903D (complying with derivative trade repository rules);

**39 After subsection 1317G(1D)**

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Insert:

*Derivative transaction rules and derivative trade repository rules*

- (1DA) A Court may order a person to pay the Commonwealth a pecuniary penalty if:
- (a) a declaration of contravention by the person has been made under section 1317E; and
  - (b) the contravention is of:
    - (i) section 901E (complying with derivative transaction rules); or
    - (ii) section 903D (complying with derivative trade repository rules).
- (1DB) The maximum amount that the court may order the person to pay for contravening a derivative transaction rule, or a derivative trade repository rule, is the penalty amount specified in those rules for the rule that has been contravened.

**40 After subsection 1317J(3A)**

Insert:

- (3B) Subsections (2) and (3) do not apply in relation to a contravention of:
- (a) section 901E (complying with derivative transaction rules); or
  - (b) section 903D (complying with derivative trade repository rules).

**41 Subsection 1317S(1) (paragraphs (a) and (b) of the definition of *eligible proceeding*)**

Omit “or 1317HA”, substitute “, 1317HA or 1317HB”.

**42 Subsection 1324B(1)**

After “subsection 798H(1)”, insert “, section 901E or 903D”.

**43 Schedule 3 (after table item 262B)**

Insert:

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262BA subsection 904B(1) or 1,000 penalty units.

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Amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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	(5)	
262BB	subsection 904C(1) or (3)	100 penalty units.
262BC	subsection 904D(2)	100 penalty units.
262BD	section 904E	100 penalty units.
262BE	subsection 904G(5)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.
262BF	subsection 904H(3)	100 penalty units.
262BG	subsection 904K(4)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.
262BH	subsection 905A(2)	500 penalty units.
262BI	section 907A	500 penalty units.

## Part 2—Amendment of other Acts

### *Australian Prudential Regulation Authority Act 1998*

#### **44 Subsection 56(1)(at the end of the definition of *protected document*)**

Add:

It also includes a document that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than a document containing information that has already been lawfully made available to the public from other sources.

#### **45 Subsection 56(1)(at the end of the definition of *protected information*)**

Add:

It also includes information that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than information that has already been lawfully made available to the public from other sources.

### *Australian Securities and Investments Commission Act 2001*

#### **46 At the end of paragraph 12BAA(8)(g)**

Add:

or (iv) a derivative trade repository;

#### **47 Paragraph 12BAB(1)(g)**

After “service”, insert “(not being the operation of a derivative trade repository)”.

#### **48 After paragraph 14(2)(g)**

Insert:

(ga) the provision of a derivative trade repository;

#### **49 Paragraphs 31(1)(a), (b) and (g)**

Omit “or clearing and settlement facility”, substitute “, clearing and settlement facility or derivative trade repository”.

**50 At the end of subsection 127(1)**

Add:

Note: Information given to ASIC under Part 7.5A of the Corporations Act may be taken, for the purpose of this section, to be given in confidence in connection with the performance of ASIC’s functions under that Act: see subsections 903A(5) and (6), and 906A(3) and (4), of the Corporations Act.

**51 At the end of subsection 127(4C)**

Add:

; or (c) is a body corporate that holds an Australian derivative trade repository licence or that operates a prescribed derivative trade repository.

**52 After paragraph 243D(c)**

Insert:

(ca) to a derivative trade repository licensee, or to the operator of a prescribed derivative trade repository; or

**53 After paragraph 243E(c)**

Insert:

(ca) to a derivative trade repository licensee, or to the operator of a prescribed derivative trade repository; or

***Mutual Assistance in Business Regulation Act 1992***

**54 At the end of section 22**

Add:

- (2) The Minister may, by signed instrument, delegate any of his or her powers or functions under this Act to:
- (a) a member (or a member of the board) of a Commonwealth regulator; or
  - (b) a member of the staff of a Commonwealth regulator who:
    - (i) is an SES employee, or acting SES employee; or
    - (ii) is an APS employee who holds, or is acting in, an Executive Level 2 position; or

- (iii) holds, or is acting in, an office or position that is equivalent to an SES employee, or an Executive Level 2.

### ***Reserve Bank Act 1959***

#### **55 Subsection 79A(1)**

Insert:

*financial sector supervisory agency* means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

#### **56 Subsection 79A(1)**

Insert:

*foreign central bank* means the central bank or monetary authority of a foreign country.

#### **57 Subsection 79A(1) (definition of *protected document*)**

After “Part 7.3”, insert “or 7.5A”.

#### **58 Subsection 79A(1) (definition of *protected information*)**

After “Part 7.3”, insert “or 7.5A”.

#### **59 Subsection 79A(2)**

After “Part 7.3”, insert “or 7.5A”.

#### **60 Subsection 79A(3)**

Omit “prohibited information”, substitute “protected information”.

#### **61 After subsection 79A(3)**

Insert:

- (4) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document to:
- (a) a financial sector supervisory agency; or
  - (b) a foreign central bank;
- if the person is satisfied that the disclosure of the information, or the production of the document, will assist the financial sector

supervisory agency, or the foreign central bank, to perform its functions or exercise its powers.

**62 Subsection 79A(6A)**

After “Part 7.3”, insert “or 7.5A”.

**63 Paragraphs 79A(6B)(a) and (b)**

After “Part 7.3”, insert “or 7.5A”.

**64 Subsection 79A(8)**

After “Part 7.3”, insert “or 7.5A”.

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*[Minister’s second reading speech made in—  
House of Representatives on 12 September 2012  
Senate on 31 October 2012]*

(149/12)